

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

BEAU MCPHAIL

PLAINTIFF

VS.

CIVIL ACTION NO.: 4:24-cv-2-DMB-JMV

PERCY L. LYNCHARD

DEFENDANT

ORDER DENYING PLAINTIFF'S MOTION FOR APPOINTMENT OF NEXT FRIEND

This matter is before the court on the motion [Doc. 24] of the *pro se* Plaintiff for Appointment of Next Friend, his father, Justin McPhail, as Next Friend in this action.

In this action, the *pro se* Plaintiff asserted various claims related to child custody and child support determinations associated with his parents' divorce. The District Judge in this action dismissed the case without prejudice on January 27, 2025. [Doc. 22]. On February 13, 2025, Plaintiff filed a Motion for Reconsideration asking the District Judge to reconsider dismissal of the case [Doc. 23], That motion remains pending. On April 10, 2025, Plaintiff filed the present motion. [Doc. 24].

A "next friend" is appointed when the real party in interest cannot appear on their own behalf to prosecute the action because of some incapacity, whether by infirmity, insanity or in this case age of minority. *Whitmore v. Arkansas*, 495 U.S. 149, 163-164. In the instant matter, there is no pending action to prosecute as it was dismissed by the District Judge on January 27, 2025. [Doc. 22]. Should the District Judge grant the Motion for Reconsideration, reversing her dismissal and resuming this action, then Plaintiff may re-urge the present motion.¹

¹ The undersigned takes no position on the Motion for Reconsideration before the District Judge other than to note that the Motion for Reconsideration appears to argue that the Federal Rule of Civil Procedure governing capacity to sue is unconstitutional under the First Amendment. [Doc 23].

For the foregoing reasons, Plaintiff's Motion is **DENIED** as moot with leave to re-file should the Motion for Reconsideration be granted and the case reinstated.

SO ORDERED this, the 2nd day of May, 2025.

/s/ Jane M. Virden
UNITED STATES MAGISTRATE JUDGE